IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 557 OF 2007

IN

FIRST APPEAL NO. 197 OF 2007

BLOSSOM PETER PEREIRA ..APPELLANT

V/S

PETER JOSEPH PEREIRA ..RESPONDENT

MR. P.M. SHAH FOR APPELLANT.

A.G. DAMLE FOR RESPONDENT.

CORAM: S.K. SHAH, J.

DATE : 18TH APRIL,2007.

P.C.

1. Heard learned counsel on both sides. This dispute is between the husband and wife. Therefore on the last occasion the parties were directed to settle the matter as both of them had expressed on 8th March 2007 before this court to find out possibility of settlement. On the last occasion it was specifically mentioned that they will try to settle the matter. Today it is submitted that no settlement is possible.

2. The Trial Court has passed a decree to the effect that both, husband and wife are the joint owners of the property. The order further mentio ns that the defendant wife was directed to vacate and handover vacant, peaceful and physical possession of the half portion of suit flat to the plaintiff. In the alternative to compensate him by paying money to the extent of his share as per the market rate within three months from the date of the order. In this regard it is submitted that the partition of the flat is not possible. It is also submitted by the learned counsel for the Appellant that the wife is unable to pay compensation by paying the money to the extent of half share. It is submitted that the husband is also unable to pay the half share. Both of them do not have any alternative accommodation.

3. Under the circumstances, learned counsel for the Appellant has suggested that the Respondent husband would not be injuncted from entering the house. However, the husband and wife are facing divorce petition in the Family Court filed by the husband. Considering all these aspects, by way of

interim arrangement till the disposal of the Appeal

it would be proper to allow both the parties to remain in the same house. The extent of the house is one bed room hall kitchen. The area of these 3 rooms as given are kitchen around 75 sq. ft., hall around 270 sq. ft. and bed room around 215 sq. ft. It is submitted at the bar that all the 3 rooms has opening in the passage which is common. Under the circumstances it would be proper that one room either hall or bed room should be occupied by the husband and other room can be occupied by the wife and kitchen being accessible to both. Under the circumstances it is directed that the bed room should be occupied by the husband and hall shall be occupied by the wife. Both should have access to the kitchen. The children may stay either with wife or husband as per their choice. This arrangement shall continue till the decision of the Appeal.

3. The application stands disposed of.

4. The parties to act on the copy of the order duly authenticated by the Shirastedar of this

court.

(S.K. SHAH, J.)